

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 547 of 2022

In R/SPECIAL CIVIL APPLICATION NO. 8631 of 2020

With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2022

In R/LETTERS PATENT APPEAL NO. 547 of 2022

With

R/LETTERS PATENT APPEAL NO. 583 of 2022

In

SPECIAL CIVIL APPLICATION NO. 8631 of 2020

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CIVIL APPLICATION (FOR STAY) NO. 1 of 2022

In R/LETTERS PATENT APPEAL NO. 583 of 2022

In

SPECIAL CIVIL APPLICATION NO. 8631 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE N.V.ANJARIA

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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KAUSHAL ARVINDKUMAR BHATT

Versus

THE GUJARAT TECHNOLOGICAL UNIVERSITY THROUGH THE REGISTRAR

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**Appearance:**

MR VAIBHAV A VYAS(2896) for the Appellant(s) No. 1

MR DG SHUKLA(1998) for the Respondent(s) No. 1

MR HRIDAY BUCH(2372) for the Respondent(s) No. 2

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**CORAM:HONOURABLE MR. JUSTICE N.V.ANJARIA**

and

**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

**Date : 31/03/2023**

**CAV JUDGMENT**

**(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)**

The Challenge in these two Letters Patent Appeals preferred under clause 15 of the Letters Patent, is addressed to the same judgment and order dated 25.03.2022 of learned Single Judge whereby the Special Civil Application filed by petitioner-respondent no.2 herein came to be allowed.

1.1 Learned Single Judge set aside the appointment of original respondent no.2 as Associate Professor (Management) with Gujarat Technological University. He was directed to forthwith vacate the post in question. The University was further directed to consider the petitioner for the post on the ground that she was the candidate who held the qualifications prescribed for the post.

2. Letters Patent Appeal No. 547 of 2022 is preferred by the original respondent no.2 whose appointment was set aside, whereas the other Letters Patent Appeal is by the Gujarat Technological

University, calling in question judgment and order of learned Single Judge.

2.1 Since both the appeals arise from the very judgment and order of learned Single Judge and involve similar facts and identical issues, they were heard together to be treated by this common judgment and order.

3. Noticing the basic facts, the original petitioner prayed in her petition to hold and declare that respondent no.2-appellant of first captioned Letters Patent Appeal, was ineligible for the post of Associate Professor (Management). It was prayed to set aside the appointment of respondent no.2 made on 06.11.2019. The petitioner prayed to direct the respondent University to consider her case for appointment to the post as per her selection pursuant to the advertisement. For declaration that respondent no.2 was ineligible, a writ of quo warranto was prayed for. In respect of the second limb of the prayer to direct the University to consider the case of the petitioner, mandamus was sought for.

3.1 The respondent Gujarat Technological University published advertisement No. 20/19 along with other advertisement for different posts, for recruitment to the post of Associate Professor (Management) for School of Management and Computer Application. Two

posts were advertised out of which one was for open category, whereas the other was for Scheduled Tribe category. The process of selection was comprised of interview after scrutiny of application and shortlisting of the candidates.

3.1.1 The petitioner stated that as she possessed Ph.D degree in Management and fulfilled the other required criteria, therefore applied for the post in open category. Total 29 applications were received for two posts. At the end of the scrutiny, the name of the petitioner was mistakenly included in the list of candidates not qualified for interview, which error however came to be corrected upon submission of the petitioner and she was called for interview which was held on 22.10.2019.

3.1.2 The result of the selection process was declared on 06.11.2019. Respondent no.2 was shown as selected candidate in general category. The petitioner's name figured in the wait-list.

3.2 The advertisement mentioned the eligibility criteria for the post of Associate Professor (Management), which was as under,

“(a) Ph.D degree in Management with first class or equivalent at either Bachelor's or Master's level in the relevant/appropriate branch or equivalent branch. AND

(b) At least total 6 research publication in SCI journals / UGC / AICTE approved list of journals. AND

(c) Minimum of 8 years of experience in teaching /research / industry. Out of which at least 2 years shall be post Ph.D experience.

(d) Possess the basic knowledge of Computer application as prescribed by the Government of Gujarat."

3.2.1 The appointment to the post of Associate Professor is made by direct selection as well as by way of promotion. The qualifications for the post are governed by All India Council of Technical Education (AICTE) Regulations, which are published under Notification dated 01.03.2019. Regulation 5.2(c) provides for qualification of the post.

3.2.2 Section 5.2(c)(i) deals with direct recruitment. The requirements are,

For Direct Recruitment

(a) Ph.D. degree in the relevant field and First class or equivalent at either Bachelor's or Master's level in the relevant branch and

(b) At least total 6 research publications in SCI journals/ UGC/ AICTE approved list of journals and

(c) Minimum of 8 years of experience in teaching/ research industry out of which at least 2 years shall be Post Ph.D. experience.

3.2.3 For promotional incumbents, it is Regulation 5.2(c)(ii). It would be seen from the above eligibility criteria mentioned in the advertisement based on the AICTE Regulations that in order to be eligible for the post of Associate Professor by way of direct recruitment, the candidate should have Ph.D degree in the relevant field.

3.3 It was the case of the petitioner in the petition that it was learnt by her that the qualifications held by respondent no.2 who was selected was not in consonance with the eligibility requirement. The petitioner stated that she addressed letter to the Registrar of the University, but did not receive any reply even after reminder was sent. It was averred that the application under Right to Information was made wherefrom, it became known to the petitioner that respondent no.2 did his Ph.D in Commerce. It was stated that when the petitioner approached the AICTE with her grievance that the selected candidate was not holding the Ph.D in the relevant field, AICTE asked the University to look into the issue.

3.4 The University addressed letter to the Deputy Director, AICTE dated 20-21.01.2020 to explain that the selected candidate held Ph.D in Commerce and that as per the AICTE Notification dated 01.03.2019, Commerce was the discipline of Management. It was the stand of the University that respondent no.2 was

therefore eligible and was found suitable for the post in question. It was stated that the selection of the respondent no.2 was approved by the Board of Governance of the University.

3.5 It is was the contention of the petitioner that the respondent no.2 did not possess the requisite educational qualification of Ph.D in Management and that since he possessed Ph.D in Commerce, it was the eligibility criteria recognised by the University beyond the advertisement. It was the contention that the consideration of the qualification of the respondent no.2 of the Degree of Ph.D in Commerce was contrary to Regulation and that the appointment was required to be set aside. It was contended that as respondent no.2 did not have the Ph.D in basic branch of Management, he was liable to vacate the post. It was prayed to issue the writ of quo warranto.

3.6 While allowing the petition, learned Single Judge noticed Regulation 5.2(c) of the Notification dated 01.03.2019, which provided for qualification of Associate Professor to observe that in order to be eligible to the post of Associate Professor by direct recruitment, the incumbent should have Ph.D in relevant field.

3.6.1 It is the view taken by the learned Single Judge that in no circumstances, the Ph.D degree in Commerce could be treated as equivalent to Ph.D in

Management and since the selected candidate, respondent no.2, held the Ph.D in Commerce, he was required to be treated as ineligible. The observations and findings of learned Single Judge are extracted herein,

"7.1 Reading the qualification makes it clear that an incumbent should have a Ph.D degree in Management and have a first class or equivalent at either Bachelor's or Master's level in the relevant/appropriate branch. In the present case, the petitioner was a Ph.D in Management whereas the respondent No.2 holds a Ph.D in commerce. By no stretch of interpretation can a Ph.D in Commerce be treated to be equivalent to a Ph.D in Management, though the subjects may overlap. This is because the primary requirement for the post is a Ph.D in Management. The petitioner is qualified and available and even the first Scrutiny Committee opined that the respondent No.2 was ineligible. No special circumstances were brought out why a second Scrutiny Committee opined otherwise.

3.6.2 Learned Single Judge proceeded thereafter to emphasize that the incumbent to be selected must hold Ph.D in Management. He observed that the opinion of the expert was insignificant when one compares the management versus commerce. In paragraph 7.4, following was observed,

"Obviously therefore, the advertisement of the GTU required that in order to be eligible for appointment for an Associate Professor by direct recruitment an incumbent essentially and primarily must hold a Ph.D in Management. The argument therefore about the relevance of Management versus Commerce in context of the



syllabi and the opinion of Dr.Kulkarni pales into insignificance. The FAQ of the UGC also is in context of equivalence of M.Com vs. MBA and the UGC regulation therefore cannot be pressed into service when there are special qualification prescribed by the AICTE. It is in this context that "relevant branch" has to be read. The University and the council for the respondent No.2 are distorting the Court into getting into the arena of the question of relevance, appropriateness and / or equivalence of the course of Management vs. Commerce. The court need not step into that controversy when the primary consideration is whether an incumbent needs the degree of Ph.D in Management for being considered. Admittedly, the respondent NO.2 does not hold a Ph.D in Management but a Ph.D in commerce."

3.6.3 Learned Single Judge stated that the Court could not be drawn into the arena of question of appropriate and/or equivalence of the course of management versus commerce. Accordingly and yet, learned Single Judge allowed the petition by setting aside the appointment of respondent no.2. It was further directed to University to consider the petitioner for appointment to the post holding that she possessed the prescribed qualification.

3.7 While challenging the judgment and order of learned Single Judge, Gujarat Technological University in its Letters Patent Appeal submitted that the qualification required for the candidate to be posted by way of direct recruitment as Associate Professor (Management) was "Ph.D Degree in Management with first class or equivalent at either Bachelor's

or Master's level in the relevant/appropriate branch or equivalent branch". It was the stand of the University that candidate should possess Ph.D Degree or equivalent branch. It was contended that commerce is considered as equivalent branch as far as recruitment to the Management Post is concerned.

4. The learned senior advocate Mr. Sudhir Nanavaty assisted by learned advocate Mr. D.G. Shukla for the University submitted that the subjects of Commerce were taught in Master of Business Management (MBA) and subjects of Management were taught in M.Com. The subjects of Commerce were considered to be equivalent, it was stated. It was therefore the case of the University that a candidate possessing Ph.D degree in Commerce would be considered as equivalent where Ph.D. degree in Management was required. It was submitted that respondent no.2 had been possessing Ph.D degree in Commerce and therefore, as per the advertisement as well as the Regulations of AICTE, Commerce could be considered as equivalent branch, and the Ph.D degree in relevant field.

4.1 It was pointed out that respondent no.2 was selected by the University after obtaining the opinion of the subject expert Professor Shirish Kulkarni, Vice-Chancellor of Sardar Patel University. It was also submitted that AICTE Regulations stipulated that the procedure of considering the equivalence of degrees shall be devised by the

affiliated university concerned. It was submitted that the Board of Governors of Gujarat Technological University passed Resolution on 28.03.2018 adopting AICTE Rules for recruitment to academic and teaching posts.

4.1.1 It was therefore submitted that holding of Ph.D. degree by respondent no.2 was in relevant branch only and learned Single Judge committed serious error in substituting his view that respondent no.2 possessed Ph.D in the branch not acceptable as part of eligibility.

4.2 In the affidavit-in-reply filed by the University before the learned Single Judge, the stand was taken on the above lines and submissions were canvassed with elaboration before the Court that as per Regulation 5.1(b), the minimum qualification for direct recruitment on the post of Associate Professor was "Ph.D. degree in the relevant field and First Class or equivalent at either Bachelor's or Master's level in the relevant branch".

4.2.1 The University, it was submitted, having considered all relevant aspects, treated the Ph.D in Commerce with the subject of management and commerce to be equivalent. It was submitted that the Master's degree in business administration was considered equivalent with M.Com. for the post of Associate Professor and the subjects of MBA and Commerce were

subjects in relevant field. It was on the same logic that the relevant field was viewed and construed to treat Ph.D. in commerce as equivalent acceptable eligibility criteria for the post of Assistant Professor.

4.3 Learned senior advocate for the University however submitted that university was inclined to re-advertise the post as may be advised. While this submission and statement coming forth from the University is noted, this Court dissuades itself from expressing anything in said regard as the arguments were canvassed on merits by the aggrieved parties. Suffice it to say that the University is the master of its own affairs.

4.4 Learned senior advocate Mr. Gautam Joshi assisted by learned advocate Mr. Vaibhav Vyas for the appellant-respondent no.2 submitted at the outset that the post of Associate Professor (Management) could not be said to be a public office to maintain a writ of quo warranto. He then submitted that the learned Single Judge failed to appreciate that the requirement in the advertisement was Ph.D. in management or equivalent branch. It was submitted that the appointment to the post of Associate Professor was to be governed by AICTE Regulations which provided for Ph.D. degree in relevant field along with other qualifications needed for the post of Associate Professor. It was therefore submitted

that the candidate should have Ph.D. in relevant field to be eligible to be appointed to the post.

4.4.1 It was submitted that it was not even the case of the original petitioner that respondent no.2 was not eligible for being considered for the post of Associate Professor (Management) as Ph.D. in Commerce possessed by him could not be said to be relevant for the purpose of appointment to the post by way of direct selection. It was submitted that though learned Single Judge observed that the qualification mentioned in the advertisement has to be read in the context of AICTE Notification, he failed to apply the same to hold that the relevant field would not include commerce.

4.4.2 It was submitted that commerce and management were not only relevant fields but were areas of interdisciplinary nature. It was submitted that the view taken by the learned Single Judge that Ph.D in Management was *sine qua non* for appointment to the post was contrary to the Regulations framed by AICTE was not liable to be sustained.

4.5 Learned advocate Mr. Hriday Buch for the original petitioner supported the judgment and order of the learned Single Judge to submit that in appointing original respondent no.2 who held the qualification of Ph.D. in Commerce, to the post of Associate Professor (Management), the University

crossed the prescription of eligibility. It was submitted that the post in question was a public office and was one of the authorities mentioned under the University statutes. It was submitted that when the qualification needed was Ph.D in relevant field, relevant field had to be construed to be the field of Management only, as rightly held by the learned Single Judge. When the selectee possessed the degree of Ph.D. in Commerce from the Saurashtra University from the faculty of commerce, he was wrongly treated as eligible, he submitted.

4.5.1 Learned advocate for the original petitioner-respondent no.2 herein further submitted that the question was not of equivalent degree, but it was of relevant field and also as to whether the selectee possessed the requisite qualification itself. It was submitted that the advertisement was clear in mentioning the required qualification. He relied on the decision of the Supreme Court in **Dr. Bhanu Prasad Panda vs. Chancellor, Sambalpur University [(2001) 8 SCC 532]**. For his submission that the writ of quo warranto was maintainable, he relied on the decision of **Central Electricity Supply Utility of Odisha vs. Dhabei Sahoo & Ors. [(2014) 1 SCC 161]** and the decision of this Court in **Mukesh V. Chavda vs. State of Gujarat[2013 (1) GLR 165]**.

4.5.2 It was next submitted by the learned advocate for respondent no.2 that the first scrutiny

committee disqualified the selectee and thereafter, another scrutiny committee was appointed. It was submitted that the University sought opinion of the expert Dr. Kulkarni who himself held Ph.D. in Commerce and he was part of Selection Committee. Pressed into service was the decision of the Supreme Court in **Ganpat Singh Gangaram Singh Rajput vs. Gulbarga University [(2014) 3 SCC 767]**, in which it was held that broad principle may be acceptable that the academic issues must be left to be decided by the expert body and the Court cannot act as an appellate authority, but at the same time could not be said that the unreasonable view of the expert body could not be subjected to judicial review.

5. Having considered the compass and contours of the controversy, it may be stated that what is prayed for is the writ of quo warranto to unseat respondent no.2 on the post of Associate Professor, Management. The writ of quo warranto is a technical writ. The quo warranto is issued when the holder of the office which is of public nature lacks qualification necessary for such post, when the appointee could be said to have usurped the post.

5.1 It is trite principle reiterated in **Central Electricity Supply Utility of Odisha (supra)** and other decision that a writ of quo warranto can be issued only where there is a violation of statutory provisions.

5.1.1 In **Central Electricity Utility of Odisha (supra)**, the Supreme Court stated that the jurisdiction of the High Court in issuing writ of quo warranto is limited. Extracting the observations,

"From the aforesaid exposition of law it is clear as noon day that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules.... The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority."

(para 21)

5.1.2 In the **University of Mysore vs. C.D. Govinda Rao and Anr. [AIR 1965 SC 491]**, the Apex Court quoted Halsbury's Laws of England (3rd Edition, Vol.II, p.145], which is relevant to consider,

As Halsbury has observed "An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to, inquire by what authority he supported his claim, in order that the right to the office or franchise might be determined:"

Broadly stated, the quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding



is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the judiciary a weapon to control the Executive from making appointments to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office, who might be allowed to continue either with the connivance of the Executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to the enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not.

(Para 7)

5.1.3 Thus, the essential conditions for issuing writ of quo warranto are that it would lie against holder of public office who lacks the qualification to hold office and that his appointment is not in accordance with law. An appointee who lacks statutory qualification and thus has been usurper of office can be removed from the post by issuing writ of quo warranto. The appointment therefore manifestly should be against law to unseat such appointee. It is the apparent breach of statutory provisions, which may have led the appointment, would attract the writ of quo warranto.

5.1.4 Having noticed the principles underlying, the writ of quo warranto, now adverting to the factual matrix, in the present case it is in respect of post of Associate Professor (Management) in the respondent Gujarat Technological University that a writ of quo warranto is prayed for declaring respondent no.2 appointee as ineligible. The ineligibility is advanced on the ground that respondent no.2 did not hold Ph.D in the 'relevant field'. The qualification prescribed in the advertisement read with AICTE Regulations, contemplated that candidates must inter alia hold Ph.D degree in the 'relevant field'.

5.1.5 It was contended that since the post was of Associate Professor (Management), the nomenclature Management indicated that the candidate must possess Ph.D degree in Management only and that the Management only would be the relevant field. As per the case of the petitioner, to be stated at the cost of repetition that since the respondent hold the Ph.D in Commerce, he was not eligible.

5.1.6 According to the respondent University, the management course was part of commerce. The commerce and management, it was that, with reference to the syllabi attached with them were interdisciplinary subjects and that commerce and management were interactive. It is trite principle that eligibility

and suitability of qualification are the aspects within the domain of the appointing authority.

5.1.7 The University considered it rightful to treat the Ph.D. Degree in Management, Ph.D. Degree in Commerce to be acceptable for Ph.D. in Management for the purpose of the post in question. In other words, the University treated the Ph.D. Degree in Commerce to be equivalent to the requirement attached to the post as eligibility. When the requirement postulated the Ph.D. Degree in the 'relevant field', the University took the view that the 'relevant field' would encompass, in the facts and circumstances and having regard to interactive subjects, the Management as well as Commerce. The 'relevant field' was construed by the University for its inclusive ambit for the purpose of deciding eligibility.

5.1.8 The qualification accepted by the University has the dimension of equivalence and it was the decision in the expert academic field. The University, obtained the expert advice of Dr. Kulkarni before arriving at a decision that the Ph.D. Commerce could be accepted as one satisfying the eligibility criteria. The decision was ratified by the Board of Governors of the University. Thus, the decision on the point became an academic expert decision. Such decision of the University has to be accepted by the Court. It is trite that the Court does not sit in appeal over the academic decisions.

5.1.9 Furthermore, when the issue travels in the realm of equivalence, as observed and held by the Supreme Court in **Gurunanakdev University vs. Sanjaykumar Katwal [(2009) 1 SCC 60]**, in **Rajendra Prasad Mathur vs. Karnataka University [AIR 1986 SC 1448]** and in **Basic Education Board, U.P. vs. Upendrarai & Ors. [(2008) 3 SCC 432]** that such questions are in the domain of the University, which is best fitted to decide having regard to the courses, the syllabus etc. Such questions are the academic considerations and policy decisions of their own kind. The Court would not substitute the academic wisdom, nor would impose its view on the spacious ground that it is a better view.

5.2 In the **University of Mysore (supra)**, a writ of quo warranto was prayed for and the facts were comparable. By seeking the writ, one Anniah Gowda was called upon to show cause under what authority he was holding the post of the Research Reader in the Central College, Bangalore. Similar as done in this case, also prayed for writ of mandamus for the direction to calling upon the university to appoint the petitioner as Research Reader. The ground was the same, mainly that said Anniah Gowda did not held the requisite qualification which was prescribed in the advertisement.

5.2.1 In the **University of Mysore (supra)**, the advertisement prescribed these qualifications, (a) A

First or High Second Class Master's Degree of an Indian University or an equivalent qualification of a Foreign University in the subject concerned (b) A Research Degree of a Doctorate Standard or published work of a high Standard (c) Ordinarily, ten years (not less than five years in any case) experience of teaching post-graduate classes and guiding research in the case of Professors and at least five years experience of teaching degree classes and independent research in the case of Readers (d) The knowledge of regional language Kannada is considered as a desirable qualification. Preference will be given to candidates who have had experience in teaching and organization of research and have also done advanced research work.

5.2.2 The qualifications prescribed in above case thus were that the applicant should possess a first or high second class Masters degree of an Indian University or an equivalent qualification of a foreign university. It was contemplated that the candidate should possess a first class masters degree of an Indian university or high second class master's degree of an Indian university or qualification of a foreign university, which is equivalent to a first class or a high second class Master's degree of an Indian university.

5.2.3 The Supreme Court held that whether the

foreign degree is equivalent to high second class masters degree of an indian university is a question relating purely to an academic matter and courts would naturally hesitate to express a definite opinion, specially when the selection board of the experts considered a particular foreign university degree as so equivalent.

5.2.4 The Supreme Court observed thus,

"In our opinion, in coming to the conclusion that appellant No. 2 did not satisfy the first qualification, the High Court is plainly in error. The judgment shows that the learned Judges concentrated on the question as to whether a candidate obtaining 50 per cent marks could be said to have secured a high Second Class Degree, and if the relevant question had to be determined solely by reference to this aspect of the matter, the conclusion of the High Court would have been beyond reproach. But what the High Court has failed to notice is the fact that the first qualification consists of two parts-the first part is: a high Second Class Master's Degree of an Indian University, and the second part is: its equivalent which is an equivalent qualification of a foreign University.

(para 12)

5.2.5 It was observed that High Court could not have discarded the expert opinion,

The High Court does not appear to have considered the question as to whether it would be appropriate for the High Court to differ from the opinion of the Board when it was quite likely that the Board may have taken the view

that the Degree of Master of Arts of the Durham University which appellant No. 2 had obtained was equivalent to a high Second Class Master's Degree of an Indian University. This aspect of the question pertains purely to an academic matter and Courts would naturally hesitate to express a definite opinion, particularly, when it appears that the Board of experts was satisfied that appellant No. 2 fulfilled the first qualification. If only the attention of the High court had been drawn to the equivalent furnished in the first qualification, we have no doubt that it would not have held that the Board had acted capriciously in expressing the opinion that appellant No. 2 satisfied all the qualifications including the first qualification.

(para 12)

5.2.6 It was further observed,

On reading the first qualification, the position appears to be very simple; but unfortunately, since the equivalent qualification specified by cl. (a) was apparently not brought to the notice of the High Court, it has failed to take that aspect of the matter into account. On that aspect of the matter, it may follow that the Master's Degree of the Durham University secured by appellant No. 2, would satisfy the first qualification and even the second.

(para 12)

5.2.7 The Apex Court held,

Therefore, there is no doubt that the High Court was in error in coming to the conclusion that since appellant No. 2 could not be said to have secured a high Second Class Master's Degree of an Indian University, he did not satisfy the first qualification. It is plain that Master's

Degree of the Durham University which appellant No. 2 has obtained, can be and must have been taken by the Board to be equivalent to a high Second Class Master's Degree of an Indian University, and that means the first qualification is satisfied by appellant No. 2. That being so, we must hold that the High Court was in error in issuing a writ of quo warranto, quashing the appointment of appellant No. 2.

(Para 12)

5.3 The Supreme Court proceeded to further observe responding to the order of the High Court criticising the report of the Board on the issue, stating that it would be safe to leave the academic decisions on the experts,

We are unable to see the point of criticism of the High Court in such academic matters. Boards of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against 38-2 S. C. India/64 the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. The criticism made by the High Court against the report made by the Board seems to suggest that the High Court thought that the Board was in the position of an executive authority, issuing an executive fiat, or was acting like a quasi-judicial tribunal, deciding disputes referred to it for its decisions. In dealing with complaints made by citizens in regard to appointments made by



academic bodies, like the Universities, such an approach would not be reasonable or appropriate.  
(Para 13)

5.4 It is highlighted that consideration which may be germane for writ of certiorari are not relevant for issuing writ of quo warranto, and then it was observed further,

What the High Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinions expressed by the Board & its recommendations on which the Chancellor has acted. In this connection, the High Court has failed to notice one significant fact that when the Board considered the claims of the respective applicants, it examined them very carefully and actually came to the conclusion that none of them deserved to be appointed a Professor. These recommendations made by the Board clearly show that they considered the relevant factors carefully and ultimately came to the conclusion that appellant No. 2 should be recommended for the post of Reader. Therefore, we are satisfied that the criticism made by the High Court against the Board and its deliberations is not justified.

(Para 13)

5.5 It was stated denying the writ of quo warranto that the writ of quo warranto is of technical nature, which consideration was ignored by the High Court. Certain conditions were required to be satisfied before writ of such nature could be issued, it was emphasised.

5.6 Noticeably, the requirement in the present case contemplated that the candidate should possess Ph.D. in the relevant field. In the view of the University the relevant field would envelope Management and Commerce both and that the Ph.D. in Commerce would be a good qualification to be accepted for the post of Associate Professor (Management). In **Rajbir Singh Dalal vs. Chaudhary Devilal University, Sirsa, [(2008) 9 SCC 284]**, the question was appointment to the post of Reader. The Supreme Court addressed the concept of 'relevant subject', which was the qualification prescribed. The appellant who possessed M.A. and Ph.D. in political science was selected to the post of Reader in public administration. The appointment was held to be valid.

5.6.1 Besides highlighting that the experts had regarded political science and public administration to be one discipline and asserting the primacy of academic expert view, the Supreme Court applied the Mimamsa principles of interpretation. They are the principles laid down by *Jaimini* around 5th Century BC in its *Sutras* and subsequently explained by the scholars. The Supreme Court explained that in Mimamsa, casus omissus is known as *Adhyahara*. The *Adhyahara* principle permits to add words to a legal text.

5.6.2 The Supreme Court stated that Mimansa principles have an edge or the Maxwell's principles inasmuch as the Maxwell does not go into the further details and sub-categories. On the other hand, in Mimansa system, general category of *Adyahara* has under it, several sub-categories such as *Anusanga*, *Anukarsa*, *Vakyashesha*, etc. In holding that the relevant subject for the post of Reader in public institution would have valid intake of M.A and Ph.D. in political science, the Supreme Court applied the *Anusanga* principle, also known as elliptical extension. It means that an expression occurring in one clause is often meant also for a neighboring clause.

5.6.3 The Mimansa principles highlighted by the Supreme Court in **Rajbir Singh Dalal (supra)**, in paragraphs 21 to 24 could be applied to the facts of the present case also. The 'relevant subject' could be inserted with Commerce as *Anusanga* to Management to arrive at a conclusion, as done by the academic experts of the University, that it could connote the eligibility criteria as prescribed. *Anusanga* is one where two seemingly different, could go together to become substitute for each other, and stand together rationally.

6. In any view, writ of quo warranto is not an appeal over an academic decision. When more particularly, the decision in the instant case

treating the Ph.D. in Commerce to be in 'relevant field' for the purpose of post of Associate Professor (Management), cannot be said to be founded on any irrational consideration.

6.1 In view of the reasons supplied as above, which operate so as not to sustain the impugned judgment and order of the learned Single Judge, any other aspect including whether, the post in question was a public office or not, and whether learned Single Judge was justified in principle in directing the consideration of the case of the petitioner to be appointed on the post in question, simultaneously while issuing the writ of quo warranto, are not needed to be gone into.

7. For the foregoing reasons and discussion, the judgment and order of learned Single Judge stands set aside. Both the Letters Patent Appeals are allowed.

Civil Applications are disposed of as requiring no orders in view of the decision in the appeals.

**(N.V.ANJARIA, J)**

**(BHARGAV D. KARIA, J)**

BIJOY B. PILLAI